

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Revocation of the
License of Drupatie Heerah to Provide
Family Child Care

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above matter came on for hearing before Administrative Law Judge George A. Beck on Friday, July 11, 2003 at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, in the City of Minneapolis, Minnesota. The record closed on the date of hearing.

Vicki Vial-Taylor, Assistant Hennepin County Attorney, 12th Floor, 525 Portland Avenue South, Minneapolis, MN 55415, appeared representing the Department of Human Services. The Licensee, Drupatie Heerah, 1001 85th Court, Brooklyn Park, Minnesota 55444-2700, appeared representing herself.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

The issue in this case is whether or not the revocation of the family child care license of Drupatie Heerah should be affirmed.

Based upon all of the proceedings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Drupatie Heerah is presently licensed to provide family child care at her residence at 1001 85th Court in Brooklyn Park, Minnesota, which is in Hennepin County.^[1]

2. On June 4, 2002, Hennepin County licensing worker Gail Wescott made an unannounced annual visit to Ms. Heerah's child care. Mr. Wescott noted several violations including a missing fire and storm drill log, a missing gate at a stairway, used diapers in a wastebasket, the use of a community towel, and a number of forms missing. Ms. Heerah was also one child over capacity because she had three infants and one toddler in care and the rule only allowed two infants with one caregiver.^[2]

3. Ms. Wescott wrote a correction order for the above noted violations which stated a deadline of July 1, 2002, for making the corrections and returning the correction order.^[3] Ms. Wescott wrote to Ms. Heerah on August 16, 2002, to state that she had not yet received the correction order back from Ms. Heerah.^[4] Ms. Heerah then returned the correction order to Ms. Wescott on September 2, 2002, with some corrections noted.^[5]

4. On September 5, 2002, Ms. Wescott stopped at Ms. Heerah's home during child care hours. At approximately 11:50 a.m. she knocked on the door. When there was no response she rang the doorbell about three times. When there was no response to that she went to her car and telephoned Ms. Heerah. When there was no answer to the telephone call she left a voice message on the answering machine stating that she was outside. Ms. Wescott then went to the door and rang the bell another three times without response. Ms. Wescott then returned to her office, but telephoned Ms. Heerah at about 6:00 p.m. Ms. Heerah stated that she had not heard Ms. Wescott at her door.^[6] Ms. Wescott wrote a correction order for the failure to allow access to the home.^[7]

5. Ms. Wescott also made a drop-in visit to Ms. Heerah's child care on September 13, 2002. She found that Ms. Heerah had three infants and three toddlers in care plus two preschoolers. She was the only adult providing care. Ms. Wescott then wrote a correction order for overcapacity. The correction order also noted some forms missing.^[8] Ms. Heerah responded to this correction order on September 17, 2002 indicating that it had been corrected.

6. Ms. Wescott again visited Ms. Heerah on October 15, 2002. She found that Ms. Heerah was caring for five children under the age of two, as well as three preschoolers and one school age child. She was the only caregiver. Ms. Heerah told Ms. Wescott that she is within the two mile limit for school bussing and parents do not place school age children with her because bussing costs \$200 per child for the school year. She stated that she needs the money caring for several children to maintain her family.^[9]

7. Ms. Wescott wrote a correction order for the overcapacity due to one infant and four toddlers being present on October 15, 2002 indicating that the violation had to be corrected immediately.^[10]

8. On February 26, 2003, Hennepin County Child Care Licensing wrote to the Commissioner of Human Services recommending that Ms. Heerah's license be revoked due to the continued over capacity violations, the failure to admit a licensing worker to the home as well as the other violations referenced above.^[11]

9. The Commissioner of Human Services issued an Order of Revocation of Ms. Heerah's license on April 28, 2003. It cited the violations noted by Hennepin County and advised Ms. Heerah of her right to appeal.^[12]

10. Ms. Heerah filed a written Notice of Appeal on May 6, 2003.^[13]

11. Ms. Wescott also visited Ms. Heerah on May 22, 2003. Ms. Heerah was not over capacity on that date but her records revealed that she was over capacity with four infants and toddlers in care for a ten day time period beginning May 12, 2003. On May 22, 2003 and a later visit on June 13, 2003, the community bath towel was still being used by the children instead of separate use towels.^[14]

12. Hennepin County Child Care Licensing considered alternatives to revocation such as conditional licensure but rejected it because of the chronic nature of the violations.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. § § 14.50 and 245A.08.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department and Hennepin County have complied with all substantive and procedural requirements of law and rule.

4. Minn. Stat. § 245A.07, subd. 3 authorizes the Commissioner of Human Services to revoke the license where a license holder fails to comply fully with applicable law or rules.

5. That under Minn. Stat. § 245A.08, subd. 3, if the Department demonstrates that reasonable cause exists to take action, the burden of proof in a hearing involving the revocation of a child care license shifts to the license holder to demonstrate a preponderance of the evidence that the license holder was in full compliance with laws and rules allegedly violated.

6. Minn. Stat. § 245A.04 requires Licensees to grant access to child care facilities to licensing workers without prior notice.

7. The Department has demonstrated reasonable cause to believe that Ms. Heerah denied access to a licensing worker on September 5, 2002 and Ms. Heerah has failed to prove by a preponderance of the evidence that she was in compliance with the rule.

8. Minn. Rule pt. 9502.0367 provides that when operating under a C1 license a child care provider may have no more than three toddlers and infants and no more than two infants in care, with one adult caregiver.^[15]

9. That the Department has demonstrated reasonable cause to believe that ms. Heerah was in violation of the child adult ratios set out in the rule on June 4, 2002, September 13, 2002 and October 15, 2002.^[16] Ms. Heerah has failed to prove by a preponderance of the evidence that she was in compliance with this rule.

10. Minn. Rule pt. 3502.0425 provides that gates or barriers must be used at stairways when children between the ages of 6 and 18 months are in care.

11. The Department has demonstrated reasonable cause to believe that Ms. Heerah did not have a gate in place at the stairway on June 2, 2002, when children under 18 months were in care. Ms. Heerah has not proved by a preponderance of the evidence that she was in compliance with this rule.

12. Minn. Rule pt. 9502.0435, subp. 8 requires a monthly log of fire and storm drills in each child care residence. The Department has shown reasonable cause to believe that Ms. Heerah lacked this item on June 4, 2002 and Ms. Heerah has not proved by a preponderance of the evidence that she was in compliance with this rule.

13. Minn. Rule pt. 9502.0435, subp. 10, requires separate towels for children in child care facilities. The Department has demonstrated reasonable cause to believe that Ms. Heerah was in violation of this rule on June 4, 2002 and Ms. Heerah has failed to show by a preponderance of the evidence that she was in compliance with this rule.

14. Minn. Rule pt. 9502.0435, subp. 13, requires that a covered diaper disposal container must be used and the container must be emptied when full. The Department has shown reasonable cause to believe that Ms. Heerah had a container

with the used diapers accessible to children on June 4, 2002, and Ms. Heerah has failed to show by a preponderance of the evidence that she was in compliance with this rule.

15. Minn. Rule pt. 9502.0405, subp. 4, requires a child care provider to maintain several forms and immunization records for each child in care. The Department has shown reasonable cause to believe that these forms were missing in Ms. Heerah's child care on June 4, 2002 and September 13, 2002. Ms. Heerah has not demonstrated by a preponderance of the evidence that she was in compliance with this rule.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That disciplinary action be taken by the Commissioner of Human Services.

Dated this 17th day of June 2003.

S/ George A. Beck

GEORGE A. BECK

Administrative Law Judge

Reported: Taped (Two Tapes,
No Transcript Prepared)

MEMORANDUM

The most serious violations alleged by the Department in this case are that Ms. Heerah was over capacity because she was caring for too many infants and toddlers and that she denied access to a licensing worker who attempted to visit her child care home. Ms. Heerah acknowledged at the hearing that she was over capacity on several occasions. The licensing worker testified that the purpose behind the rule is to protect infants and toddlers since one adult cannot adequately care for more small children than the rule specifies.

Ms. Heerah maintained at the hearing that she did not hear the doorbell when Ms. Wescott visited her residence on September 5, 2002. Ms. Heerah acknowledged she was providing care that day. However, Ms. Wescott knocked and rang the doorbell and phoned Ms. Heerah during a 20-minute attempt to gain her attention. Furthermore, Ms. Heerah did not return the voicemail left at her residence and did not talk to Ms. Wescott until Ms. Wescott called her at 6:00 p.m. that evening. Given these facts it is more likely than not that Ms. Heerah was aware of Ms. Wescott's attempt to visit on September 5, 2002.

The other violations are less significant however Ms. Heerah appears to acknowledge that there was a problem with diaper disposal but states that it was the same situation over the years.

At the hearing Ms. Heerah and her husband asked that she be given one more chance and indicated that she now understood the capacity requirements. She appears willing to accept conditional licensure with weekly visits by a licensing worker. Hennepin County believes that she was essentially on a conditional license for the second half of 2002 and yet was unable to bring her child care into compliance. The chronic nature of the violations in regard to overcapacity as well as the failure to admit a licensing worker justifies significant disciplinary action.

G.A.B.

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- [\[1\]](#) Ex. 1.
 - [\[2\]](#) Ex. 2, Ex. 13.
 - [\[3\]](#) Ex. 3.
 - [\[4\]](#) Ex. 4.
 - [\[5\]](#) Ex. 3.
 - [\[6\]](#) Ex. 5.
 - [\[7\]](#) Ex. 6.
 - [\[8\]](#) Ex. 7.
 - [\[9\]](#) Ex. 8.
 - [\[10\]](#) Ex. 9.
 - [\[11\]](#) Ex. 10.
 - [\[12\]](#) Ex. 11.
 - [\[13\]](#) Ex. 12.
 - [\[14\]](#) Ex. 14.
 - [\[15\]](#) Ex. 13.
 - [\[16\]](#) Ex. 15